

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

STEPHEN KELLY,

Plaintiff,

vs.

MONTANA DEPARTMENT OF  
TRANSPORTATION, and  
MALCOLM LONG, in his official  
capacity as Director of the Montana  
Department of Transportation,

Defendants.

CV 19-67-H-BMM-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Amended Findings and Recommendations in this case on March 9, 2021. (Doc. 12). Judge Johnston recommended that Plaintiff's Complaint (Doc. 2) should be DISMISSED with prejudice for failure to assert a cognizable claim upon which relief should be granted. (Doc. 12).

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with

a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error and finding none,

**IT IS ORDERED** that Judge Johnston’s Amended Findings and Recommendations (Doc. 12) are **ADOPTED IN FULL**.

1. Plaintiff’s Complaint (Doc. 2) is **DISMISSED** with prejudice because Plaintiff has failed to assert a cognizable claim upon which relief may be granted;
2. All pending motions (Docs. 7, 8, 10) are **DENIED** as moot; and
3. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 23rd day of March, 2021.



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Brian Morris, Chief District Judge  
United States District Court